UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

STEIN, INC.

and Cases 09-CA-215131
09-CA-219834

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA (LIUNA), LOCAL 534

INTERNATIONAL UNION OF OPERATING
ENGINEERS (IUOE) LOCAL 18
(Stein, Inc.)

and Case 09-CB-215147

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA (LIUNA), LOCAL 534

COUNSEL FOR THE GENERAL COUNSEL'S REPLY TO RESPONDENTS' ANSWERING BRIEFS

Pursuant to Section 102.46(e) of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits a Reply Brief to the Answering Briefs filed by Stein, Inc. (Respondent Stein) and the International Union of Operating Engineers (IUOE) Local 18 (Respondent Local 18) to the General Counsel's limited cross-exceptions.

I. Respondent Stein's Citation to *Ridgewood Healthcare Center* Misses the Mark:

Ridgewood Healthcare Center, 367 NLRB No. 110 (2019) involved – in relevant part – Section 8(a)(3) allegations, among others, that a successor employer engaged in a discriminatory hiring scheme when it refused to hire four predecessor employees. *Ridgewood Healthcare Center*, 367 NLRB No. 100 slip op. at 3. It did so in order to avoid its successorship bargaining obligations to the incumbent labor organization. *Id*. Accordingly, the Board found that the successor employer "violated Section 8(a)(3) and (1) of the Act by refusing to hire" four predecessor employees. *Id*. at 5.

Very clearly, *Ridgewood*'s applicability to the instant matters is nil. Unlike the successor in *Ridgewood*, Respondent Stein has not been accused of engaging in a discriminatory hiring scheme in violation of Section 8(a)(3) in order to avoid its successorship obligations. On the contrary, the parties here stipulated that as of January 1, 2018 – when Respondent Stein commenced operations at the AK Steel Middletown slag operation – or by January 6, 2018 at the latest, Respondent Stein employed a "substantial and representative complement" of employees who formerly worked for the predecessor. (J. Ex. 1, p. 12, ¶ 23) Simply put, the General Counsel has not alleged that Respondent Stein engaged in unlawful hiring practices to avoid its successorship obligations, thus Respondent Stein's reliance on *Ridgewood* is misplaced.

Furthermore, the remedial overreach struck down by the Board in *Ridgewood* only applies to those successorship, Section 8(a)(3) discriminatory hiring cases. It is clear from the facts and the Board's analysis in *Ridgewood*, as well as its overruling of *Galloway School Lines*, 321 NLRB 1422 (1996) and other similar precedent, that the Board intended to reign in *Love's Barbeque*-like remedies being ordered in situations where a successor's unlawful hiring practices did not create an uncertainty as to whether it would have hired all or substantially all of the predecessor unit employees. *Ridgewood Healthcare Center*, 367 NLRB No. 100 slip op at 9.

Respondent Stein claims that the instant matters are of the same ilk as *Ridgewood*, but given the complete inapplicability of *Ridgewood* to this case, this Board should see its assertions for what they are—shameless attempts to avoid prosecution by seeking a change to well-settled law. Whereas the successor in *Ridgewood* was accused of refusing to hire four employees to avoid its bargaining obligation, Respondent Stein knowingly refused to recognize and bargain with Laborers Local 534, the exclusive bargaining representative of the laborers unit at the slag dump; unlawfully recognized and bargained with Respondent Local 18 as the laborers unit's exclusive collective-bargaining representative without proof of any support, let alone majority

support; entered into a collective-bargaining agreement with Respondent Local 18 with enforceable union security and dues checkoff provisions covering the laborers unit; and, among other things, unlawfully informed predecessor employees that they would have to become members of Respondent Local 18 if they wanted to continue working at the slag operation for Respondent Stein.

Interestingly, for decades, Laborers Local 534 represented the laborers at the AK Steel slag operation through a litany of predecessor employers without any evidence of labor strife. Each employer complied with its obligations under the law, recognized Laborers Local 534 as the laborers' exclusive collective-bargaining representative, and the parties coexisted without any evidence of conflict. Then, Respondent Stein seized control of operations, and in a matter of days, those decades-long and peaceful bargaining units were upended, rife with labor unrest, and five meritorious unfair labor practice charges were filed. While the Supreme Court acknowledged that Congress did not choose to make the bargaining freedom of employers and unions subordinate to the prevention of industrial strife, in the same vein, it cannot be said that it made the latter subordinate to the former. Indeed, the instant cases perfectly illustrate the need to balance those dual objectives—and the well-grounded forfeiture doctrine must remain to ensure that employers like Respondent Stein cannot be the match that sets ablaze a quarter-century or more of industrial peace without facing real consequences, like the inability to set its own terms and conditions of employment without first recognizing, and abiding by, its successorship obligations.

II. Respondent Local 18's Answer is Equally Without Merit.

Respondent Local 18 makes much of the General Counsel's limited cross-exceptions, and attempts to make a proverbial mountain out of a mole-hill. Likening the General Counsel's limited cross-exceptions to First Amendment violations of free speech and the freedom of

association, Respondent Local 18 takes issue with the General Counsels' pointed exception that Judge Gollin did not order an affirmative obligation for Respondent Local 18 to cease and desist from distributing membership applications and dues check-off forms, with the unlawful assistance of Respondent Stein, to the laborers unit when it is not the certified bargaining representative and at a time when it does not enjoy majority support. Its concerns are without merit.

As noted in the General Counsel's limited cross-exceptions, Judge Gollin appropriately found that Respondent Stein violated Sections 8(a)(2) and (1) of the Act by granting assistance and support to Respondent Local 18 by allowing it jobsite access to distribute membership applications and dues-checkoff authorizations to employees in the laborers' unit. Judge Gollin correctly found a corresponding violation of Section 8(b)(1)(A) when Respondent Local 18 received and accepted assistance and support from Respondent Stein by being allowed on the jobsite to distribute membership applications and dues-checkoff authorizations. Having found that Respondent Local 18 unlawfully received and accepted assistance and support from Respondent Stein, Judge Gollin ordered that Respondent Local 18 cease and desist from accepting assistance or support from Respondent Stein at a time when it did not represent a majority of the laborers and when Laborers Local 534 was the exclusive collective-bargaining representative.

If Respondent Stein must cease and desist from granting assistance to Respondent Local 18 by allowing jobsite access to Respondent Local 18 for the express purpose of distributing membership applications and dues checkoff forms to the laborers, and if Respondent Local 18 must cease and desist from accepting such assistance because Laborers Local 534, not it, is the exclusive collective-bargaining representative of the laborers' unit, it necessarily follows that Respondent Local 18 should be ordered to refrain from distributing membership applications

and dues checkoff forms to the laborers at a time that it is receiving, and accepting, unlawful assistance from Respondent Stein. While Respondent Local 18 may have lawful access to the jobsite to represent the members of Respondent Local 18, it would be a violation of Judge Gollin's recommended Order to use that jobsite access to distribute membership applications and dues checkoff forms to laborers, the very same conduct that warranted Judge Gollin's cease and desist Order in the first instance.

The General Counsel has not attempted to restrict any rights Respondent Local 18 enjoys to represent its membership or otherwise engage in lawful organizing activity. To suggest otherwise is disingenuous. Instead, the General Counsel has simply noted that in order to effectively remedy Respondent Local 18's pervasive violations of the Act, it must be affirmatively ordered to refrain from distributing membership applications and dues checkoff authorizations to members of the laborers' unit at time, and location, where doing so necessarily involves unlawful assistance being rendered by Respondent Stein.

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CERTIFICATE OF SERVICE

April 25, 2019

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